

Expires – December 31, 2016 unless extended

Safe Harbor Indirect Cost Rate for Consultant Contracts

I. BACKGROUND

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 49 Code of Federal Regulations (CFR) 18.22(b)) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

Developing indirect cost rates annually can place a significant burden on some A&E consulting firms, and may create a barrier for otherwise eligible and qualified firms to compete for federally funded contracts. For example, small firms including many Disadvantaged Business Enterprise firms, may lack the financial sophistication to develop an indirect cost rate, or lack the resources to hire a Certified Public Accountant (CPA). CPA's are hired to conduct an audit and to provide assurance as to the development of an indirect cost rate compliant with federal requirements. Additionally, new or start-up firms generally do not have a contract-related cost history to use as a base for development of an indirect cost rate. Other established A&E consulting firms may not have previous experience with federally-funded contracts, for which an indirect cost rate would have been developed in compliance with Federal Cost Principles.

To help alleviate and remove potential barriers, the Federal Highway Administration (FHWA) has developed "Safe Harbor" (SHR), a national indirect cost rate to be utilized by eligible consultant firms on a test-evaluation basis. The testing period is from July 1, 2013 to December 31, 2016.

II. POLICY

Effective July 1, 2013, all eligible A&E consultant firms can choose to use the SHR of 110% for new A&E contracts using federal-aid highway funds executed by local agencies in the State of California within the test period.

The use of the SHR is voluntary for all eligible firms (both prime and sub-consultants) on contracts executed within the established test period, and shall not be mandated as a condition of contract award.

Use of the SHR for contracts executed after December 31, 2016, is not permitted, unless written notice is provided to all tested states extending this test period. Based on evaluations of the SHR, the FHWA may pursue development of formal policy and guidance regarding use of the SHR following the test period.

SHR Eligibility and Requirements:

Only A&E consulting firms that satisfy the criteria below have the option of using the SHR on contracts executed within the established test period.

- Firms that do not have relevant contract cost history to use as a base for

- developing its own indirect cost rate, or
- Firms that do **not** have a previously accepted indirect cost rate (ICR) by a cognizant agency, or with an audited/accepted actual ICR within the established test period, and
- **All firms are required to have a project/cost accounting system adequate to accumulate and track direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under federal cost-reimbursement contracts.**
- For eligible A&E consulting firms that use the SHR and do not have established salaries or wage rates for employees, the fixed hourly labor rates will need to be established for calculation of the direct labor portion of the contracted services. The agreed upon rate shall be reasonable as set forth in the Federal Cost Principles, considering the nature of the services to be provided. Where appropriate for the scope of services under contract, a “fully loaded”, hourly rate could be established utilizing a reasonable hourly direct labor rate, the safe harbor indirect cost rate as the overhead rate component, and an appropriate amount of fee (profit).
- SHR is permitted for Home Office rates, and not for Field Office rates. Should a firm opting for SHR be selected to provide services for a field-based contract, a field-based indirect cost rate may be negotiated, to ensure an equitable distribution of costs to the benefiting contract in accordance with FHWA guidance and as permitted within the Federal Cost Principles.
- SHR is not adjustable for the term of the consultant contract.
- No retroactive adjustments to indirect costs will be allowed for past contracts utilizing the SHR.

Other Considerations

- The expectation will be for the firm to establish a cost history for the development of an indirect cost rate for the firm in accordance with the Federal Cost Principles based on the actual costs of the firm.
- The SHR may be used in the determination of the fixed fee portion of the contract, which would not be subject to adjustment unless warranted by changes to the scope of work or duration of the contract.

III. PROCEDURE

A&E consultant firms (prime and/or sub consultants) electing to use SHR in a contract are required to submit a completed SHR Consultant Certification of Eligibility, Contract Cost, Financial Management System (Attachment 1), and a SHR Questionnaire for Evaluating Consultant Financial Management System (Attachment 2). This requirement is in addition to the A&E Consultant Audit and Review Process requirement described in Local Assistance Procedures Manual, Chapter 10, Section 10.3.

Note: If the company answers question 16 as “No”, they are not eligible for SHR.

Local Government Agencies Responsibilities:

Local Government Agencies (LGA's) are responsible to ensure all procedures are set forth and these instructions are followed. Specifically LGA are required to:

- Collect and screen all requests to use the safe harbor indirect cost rate (see Attachments 1 & 2 above). Contact Office of Policy Development and Quality Assurance - Division of Local Assistance for screen criteria,
- Submit screened requests (certifications, questionnaires, and all required



attachments) to Caltrans Audits & Investigations (A&I) for review. Submission of requests are either sent individually (for Case 1 contracts), or with the audit request packet (for Cases 2 and 3 contracts). (See Local Assistance Procedures Manual [LAPM], Chapter 10, section 10.3 for discussion and requirements on Cases 1, 2, and 3 contracts and audit request packets, LAPM Exhibit 10-A.)

- For Case 1 contracts – submit screened request along with the proposed/executed contract, scope of work, and prime consultant's Exhibit 10-K (if applicable).

Requests to use the safe harbor indirect cost rate must be accepted/approved by Caltrans A&I before contracts are executed.

IV. APPLICABILITY/IMPACTS

This policy applies to all federal-aid highway projects.

Recommended: **Original Signed By** _____
Mohammad Maljai, Process Review Engineer Date

Approved: **Original Signed By** _____
Mark Samuelson, Office Chief Date
Office of Policy Development and Quality Assurance

Attachments:

1. Attachment 1R – SHR Consultant Certification of Eligibility and Contract Cost and Financial Management System
2. Attachment 2R – SHR Questionnaire for Evaluating Consultant Financial Management System